

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EDWARD P. KOZUP and DEPARTMENT OF THE AIR FORCE,  
McGUIRE AIR FORCE BASE, NJ

*Docket No. 00-1643; Submitted on the Record;  
Issued April 3, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than an eight percent permanent impairment of the left lower extremity.

On February 22, 1994 appellant, then a 46-year-old aircraft mechanic, slipped on a patch of ice. The Office of Workers' Compensation Programs accepted his claim for a tear of the left medial meniscus and authorized surgery. On November 29, 1994 appellant underwent an arthroscopy of the left knee with a partial medial meniscectomy and abrasion chondroplasty of the medial femoral condyle and patella.

On December 22, 1998 appellant filed a claim for a schedule award and submitted a December 1, 1998 report from Dr. David R. Weiss, a Board-certified orthopedist. Appellant's complaints included left knee pain, intermittent stiffness, occasional swelling, episodes of weakness and some instability.

Dr. Weiss related his findings on physical examination, including a 2-centimeter atrophy of the left quadriceps relative to the right at 10 centimeters above the patella. He also reported a one-centimeter atrophy of the left calf relative to the right. Dr. Weiss found tenderness over the medial midline, the medial joint space and the medial femoral condyle. He found marked joint crepitus on active range of motion, more so into the patellofemoral joint.

Dr. Weiss diagnosed the following: (1) status post tear of the medial meniscus of the left knee; (2) post-traumatic chondromalacia patella of the left knee with chondro lesions involving the patella and medial femoral condyle; (3) status post arthroscopic surgery of the left knee with partial medial meniscectomy, abrasion chondroplasty involving the medial femoral condyle and patella; and (4) post-traumatic osteoarthritis involving the medial joint space. Dr. Weiss opined that the employment injury of February 22, 1994 was the competent producing factor for appellant's current subjective and objective findings.

With references to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993), Dr. Weiss rated the combined impairment of appellant's left lower extremity at 17 percent. He assigned 5 percent for arthritis (patellofemoral pain/crepitance) of the left knee under Table 62 of the A.M.A., *Guides*, and 13 percent for quadriceps atrophy of the left thigh under Table 37.

An Office medical adviser reviewed Dr. Weiss' findings and rated appellant's impairment at eight percent, based on the two-centimeter atrophy of the quadriceps under Table 37. The medical adviser noted that Table 62 of the A.M.A., *Guides*, which addresses impairment due to arthritis, may be used only if no other abnormality is present, with the exception of joint fractures.

On May 10, 1999 the Office issued a schedule award for an eight percent impairment of the lower extremity.

On January 6, 2000 an Office hearing representative affirmed the schedule award.

The Board finds that appellant has more than an eight percent permanent impairment of the left lower extremity.

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> authorizes the payment of schedule awards for the loss or permanent impairment of specified members, functions or organs of the body. The Office evaluates the degree of impairment according to the standards set forth in the specified edition of the A.M.A., *Guides to the Evaluation of Permanent Impairment*.<sup>2</sup>

According to Table 37, page 77, of the A.M.A., *Guides*, a difference in thigh circumference of 2 to 2.9 centimeters denotes an 8 to 13 percent impairment of the lower extremity from leg muscle atrophy. Dr. Weiss reported a two-centimeter atrophy, which is at the lowest end of the range. His rating of 13 percent, however, suggests that appellant's atrophy was at the highest end of the range, at or very close to 2.9 centimeters. Because his findings on physical examination show the contrary, the Office properly accepted the more appropriate rating of eight percent given by its medical adviser.<sup>3</sup>

Dr. Weiss also reported left calf atrophy of one centimeter. According to Table 37, page 77, a difference in calf circumference of 1 to 1.9 centimeters denotes a 3 to 8 percent impairment of the lower extremity from leg muscle atrophy. Because the measured atrophy is at the lowest end of the range, the Board finds that appellant has a three percent impairment of the left lower extremity due to calf muscle atrophy.

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> "In general, an impairment value that falls between those appearing in a table or figure of the A.M.A., *Guides* may be adjusted or interpolated to be proportional to the interval of the table or figure involved, unless the book gives other directions." A.M.A., *Guides* 9.

While the May 10, 1999 schedule award properly compensated appellant for the impairment of his left lower extremity due to thigh muscle atrophy, the Office must also compensate appellant for his calf muscle atrophy. On remand, the Office shall issue an appropriate schedule award for this impairment.

The A.M.A., *Guides* states that diminished muscle function should be estimated under only one of several parts of the chapter on the musculoskeletal system.<sup>4</sup> Recognizing this, FECA Bulletin No. 95-17 (issued March 23, 1995) indicates that Table 37, relating to atrophy, should not be applied together with Table 62, page 83, relating to arthritis, because doing so will result in duplicate measurements and artificially high percentages of impairment.<sup>5</sup>

Dr. Weiss reported a five percent impairment due to complaints of patellofemoral pain and crepitation following a direct trauma. Table 62 supports this estimate, but awarding schedule compensation for such an impairment on top of the schedule compensation to which appellant is entitled for muscle atrophy would amount to a double recovery. In this case, the impairment due to atrophy is greater than the impairment due to arthritis, so the Office properly based appellant's schedule award on the former.

The January 6, 2000 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC  
April 3, 2001

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>4</sup> *Id.* at 76.

<sup>5</sup> The provisions of FECA Bulletin No. 95-17 (issued March 23, 1995) are incorporated by Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exhibit 4 (October 1995).